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EXTRAORDINARY

PART II—Section 3

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 5th September 1953

S.R.O. 1699.—Whereas the election of Pandit Gangadhar, as a member of the Legislative Assembly of the State of Vindhya Pradesh of the Deosar constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Jagdish Prasad Khare, s/o Shri Bindra Prasad Khare, Mohalla Ghoghar, Rewa;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, V.P., AT REWA

ELECTION PETITION No. 6/175 of 1952

Shri Jagdish Prasad Khare, s/o Bindra Prasad Khare, resident of Mohalla Ghoghar, Rewa, V. P.—*Petitioner.*

Versus

1. Pt. Gangadhar, resident of V. Phulkesh, P.O. Deosar, Distt. Sidhi;
2. Shri Ram Khalawan, resident of V. Khekhara, P.O. Deosar, Distt. Sidhi.—*Respondents.*

CORAM

1. Shri E. A. N. Mukarji, M.A., LL.B.—*Chairman.*
2. Shri U. S. Prasad, B.A., B.L.
- Shri G. L. Shrivastava, M.A., LL.B.—*Members.*

The petitioner who was a candidate for election to V.P. Legislative Assembly from Deosar Constituency, has called in question the election of the Respondent No. 1—Pt. Gangadhar, on the ground that according to the Delimitation Order of the President No. S.R.O. 1755, dated 15th November, 1951, published in the *Gazette of India (Extraordinary)*, dated November 15, 1951, the extent of this constituency was determined and it was described as Deosar Constituency and its extent was set out as 'Deosar Kanungo Circle of Deosar Tehsil', in col. 2 of the table appended to this Order. This Order is to be read in the light of the Notification No. 11, dated 13th November, 1951 published in *V.P. Gazette*, No. 15,

dated the 15th November 1951, notifying the administrative units on which the Order of the President delimiting the Constituency was based. In this Notification the Patwari Halkas and villages constituting Deosar Kanungo Circle 'North Deosar' were mentioned. The petitioner urges that the village Phulkesh was not included in this Constituency, nor were several other villages of Patwari Halka Garhwa included in it according to the said Order and Notification. It has been further urged that another Notification purporting to include some more villages and Garhwa Patwari Halka comprising 13 villages was issued in *V. P. Government Gazette*, dated 30th December, 1951, when nomination papers were already filed on the 5th December, 1951 and the scrutiny was finished on the 8th December, 1951. The second Notification has been assailed as completely invalid because nothing could be added to or subtracted from the extent of the Constituency defined by the President in the Delimitation Order. It is pleaded that the polling that took place in these villages was illegal and has materially affected the result of the election.

2. It is further urged by the Petitioner that the village Phulkesh the electoral roll of which contains the name of respondent No. 1 was not mentioned in any of the Constituencies of Vindhya Pradesh at all, and, therefore, the nomination paper of the respondent No. 1 was improperly accepted and this improper acceptance has materially affected the result of the election. The petitioner has further pleaded that the counting of votes by the Returning Officer was irregular on the ground that 16 boxes were counted at one time, while the rules required the counting of one ballot box at a time. The Petitioner had filed an objection claiming re-counting and scrutiny before the declaration of the result but the Returning Officer did not recount and scrutinise the ballot papers as submitted by the Petitioner. The Petitioner has also urged that the serial numbers of ballot papers supplied to the Polling Officers of six polling stations were not available, because forms No. 10 were not properly filled in, and consequently the validity of the votes polled at these polling stations could not be checked. On these allegations the Petitioner claims that the election of Respondent No. 1 be declared void and that if after recounting and scrutiny of votes the Petitioner got a majority of votes, he should be declared duly elected. In the alternative, it is claimed that the whole election should be declared void on the grounds set out above.

3. The Respondent No. 1 who is a successful candidate filed a written statement traversing the grounds mentioned in the petition and pleaded that by a clerical mistake or by over-sight, some villages were not noted in the first Notification, dated the 13th November, 1951 and that the second Notification, dated the 30th December, 1951 did not add any fresh area to this Constituency but was merely a clarification of the first Notification. It was further pleaded that these Notifications did not affect the Order of the President delimiting this Constituency, and consequently the result of the election was not materially affected. It was further urged that the name of respondent No. 1 was already entered in the electoral roll of Deosar Constituency and no objection having been raised to its inclusion, the petitioner's objection regarding the inclusion of village Phulkesh in Deosar Constituency was not maintainable in view of Section 30 of the R.P. Act, 1951. Also it was contended that this Tribunal had no jurisdiction to question the Delimitation of the Constituency. Regarding the nomination of Respondent No. 1 it was urged that no objection having been raised about this nomination before the Returning Officer, none could be raised in this petition. Other irregularities about the counting of ballot papers and the claim for recount and scrutiny were denied and it was urged that, in any case, the result of the election has not been materially affected. The proper verification of the contents of the petition was also challenged by the Respondent No. 1.

4. The Respondent No. 2 the other unsuccessful candidate, did not contest the petition and remained absent, though duly served.

5. The counting of votes which took place at Sidhi on January 26, 1952, disclosed the following results:—

Name of candidate	Votes polled
1. Shri Pt. Gangadhar	2,543
2. Shri Jagdish Prasad Khare	2,504
3. Shri Ramkhelawan	1,198

6. A preliminary issue regarding the verification of the contents of the petition was framed and decided on 5th January, 1953.

7. On these pleadings the following issues were framed for trial:—

Issue No. II.—Did the President's Order S.R.O. No. 1755 of 1951 determining and delimiting the Assembly Constituencies in Vindhya Pradesh include the village Phulkesh in the Constituency described as 'Deosar Kanungo Circle of Deosar Tehsil'?

Issue No. III.—Did the President's Order S.R.O. No. 1755 of 1951 determining and delimiting the Assembly Constituency in Vindhya Pradesh include the Patwari Halka Garhwa and villages mentioned in para. 4(e) of the petition?

Issue No. IV.—What is the legal affect of the non-inclusion of these places in the President's Order, if really the Order did not include these places?

Issue No. V(a).—Did not the Notification No. 11, dated the 13th November, 1951 published in V.P. Gazette, dated the 15th November, 1951 include the village Phulkesh and other villages, and the Patwari Halka Garhwa already referred to above?

Issue No. V(b).—If so, what is the effect?

Issue No. VI(a).—Were the village Phulkesh, Patwari Halka Garhwa and other villages referred to in para. 4(c) of the petition added to the said Constituency by virtue of second Notification published in V.P. Gazette, dated the 30th December, 1951?

Issue No. VI(b).—If so, what is the effect?

Issue No. VII.—Have the alleged omissions or additions and the reception of votes from the villages in question, and polling in these villages materially affected the result of this election?

Issue No. VIII(a).—Was the nomination paper of Respondent No. 1 improperly accepted?

Issue No. VIII(b).—Has the alleged improper acceptance of this nomination paper materially affected the result of this election?

Issue No. IX.—If no objection was raised by the Petitioner to the inclusion of the name of the respondent in the electoral roll of Deosar Constituency, and the inclusion of village Phulkesh in this Constituency, cannot the petitioner raise this objection in these proceedings as contended by respondent?

Issue No. X.—Has the Tribunal no jurisdiction to question the alleged Delimitation as contended by the respondent in para. 12 of his written statement?

Issue No. XI(a).—Was the counting of votes by the Returning Officer irregular as alleged in para. 4(k) of the petition?

Issue No. XI(b).—Were the serial numbers of the ballot papers supplied to the Presiding Officer for the polling station of Kamal, Lamsari, Dighwar, Naugai, Sooda, and Mistgarwna not available, because form No. 10 was not properly filled in and therefore the invalidity of votes polled could not be checked properly?

Issue No. XI(c).—What is the effect of the alleged irregularities referred to in this Issuc Nos. XI(a) and XI(b)?

Issue No. XII(a).—Did the Petitioner and Respondent No. 2 file objections before the Returning Officer for Re-counting and Scrutiny before the declaration of the result of this election?

Issue No. XII(b).—Did the Returning Officer accept this contention and commence the recounting of a few packets and before the completion of recounting and scrutiny reject this objection?

Issue No. XII(c).—If so, has the result of the election been materially affected on account of the non-compliance with the rules regarding the counting of votes and maintenance of form No. 10 and the alleged rejection of the petitioner's objection regarding this matter?

Issue No. XIII.—Has the result of this election been materially affected by the improper reception of votes polled at the villages mentioned in para. 4(2) of the petition, because their inclusion in this Constituency was illegal as contained by the Petitioner?

Issue No. XIV.—What relief, if any, is the Petitioner entitled to?

FINDINGS

8. *Issue Nos. II and III.*—We take up Issue Nos. II and III together, because both are connected with the contents and interpretation of the President's Delimitation Order.

9. It may be noted that Vindhya Pradesh is a Part 'C' State. Under Section 4 of the Government of Part 'C' States Act (XLIV of 1951), the President is required to delimit Assembly Constituencies in Part 'C' States, as he has to do under Section 9 of the R.P. Act, 1950, in respect of Part A and B States. For this purpose Election Commission has to consult the Advisory Committee set up under sub-section 1 of Section 13 of the R.P. Act, 1950, in respect of each State (including Part 'C' States) and to formulate proposals for the delimitation of Assembly Constituencies, and has to submit them to the President for making orders under sub-section 2 of Section 4 of the Government of Part 'C' States Act. Satisfactory information about the first and second notifications not having been available from the office of the Chief Electoral Officer, V.P., regarding Delimitation Order, we requested the Election Commission to supply us with necessary information and documents. The Election Commission was pleased to forward to us the whole file of Delimitation of Assembly Constituencies in Vindhya Pradesh.

10. It is necessary to re-produce the final Delimitation Order of the President published in the *Gazette of India (Extraordinary)*, dated the 15th November, 1951, in so far as it refers to Deosar Constituency. The order stands thus:—

S.R.O. 1755, pages 1328 to 1330 of Government of India Gazette marked Ex. PW/3. In pursuance of sub-section (2) of Section 4 of the Government of Part 'C' States Act, 1951 (XLIV of 1951), the President is pleased to make the following order, namely:—

1. This Order may be called the Delimitation of Assembly Constituencies into which the State of Vindhya Pradesh shall be divided for the purpose of elections to the Legislative Assembly of the State, the extent of each such constituency, the number of seats allotted to each such constituency and the number of seats, if any, reserved for the Scheduled Castes or the Scheduled Tribes in each such constituency shall be as shown in the following table:—

Name of constituency	Extent of constituency	Total No. of seats	Seats reserved for	
			Sch. Castes	Sch. Tribes
1	2	3	4	5
****	****	****	****	****
<i>Sidhi District, Singrauli-Niwās</i>	Singrauli tehsil and Niwas Kanungo Circle of Deosar Tehsil,	2	...	1
Deosar	Deosar Kanungo Circle of Deosar Tehsil	1	...	1
Sidhi Madwas	Gird (Sidhi) and Madwas Kanungo Circles and Khairā Patwari Circle of Rampur Naikin Kanungo circle of Gopadbanas Tehsil,	2	..	1
Churhat	Rampur Naikin Kanungo Circle (excluding Khairā, Hatwa, Kolhudm, Ukarha, Kumarji and Dihuli Patwari Circles) of Gopadbanas Tehsil.	1
Kanpura	Kanpura Kanungo Circle and Hatwa, Kolhudm, Ukarha, Kumarji and Dihuri Patwari Circles of Rampur Naikin Kanungo Circles of Gopadbanas Tehsil.	1
*****	*****	*****	*****	*****

The Notification No. 11, dated Rewa, V.P., the 13th November, 1951, published in V.P. Gazette, dated 15th November, 1951 (Ex. PW2/1A) is in the following terms:—

"It is hereby notified for general information that the Administrative Units on which the orders of the President regarding delimitation of constituencies are based are given in the attached list; and these are and shall continue to be the units for election purposes, notwithstanding any other arrangements for other purposes."

At page 71 of the said V.P. Gazette begins the description of the extent of Kanungo Circle North (Deosar). Twelve Patwari Halkas, namely, Bichhi, Naugai, Keotali, Barker, Deora, Soonda, Katarihar, Karela, Kharaura, Ramgarh, Gir and

Bardi have been mentioned as constituting Kanungo Circle North (Deosar). The names of villages appertaining to each Patwari Halka have also been mentioned in this Notification at pages 72 and 73.

12. The perusal of this part of the V.P. *Gazette* clearly indicates that the entire Patwari Halka known as Garhwa consisting of 13 villages mentioned in para. 4(c) of the petition is not to be found in this Notification. So also other villages mentioned in para. 4(e) of the petition which formed part of some of the said 12 Halkas do not find place in this Notification. Furthermore, the village Phulkesh is missing from the list appended to this Notification. It is true that under Section 4(3) the President may, from time to time, after consulting the Election Commission, by order alter or amend any order made by him under sub-section 2(2). It has been proved in this case that no subsequent alteration or amendment of the Delimitation Order, dated the 11th November, 1951 was made by the President. This has been confirmed by the Election Commission.

13. In view of these facts it is argued on behalf of the petitioner that the Delimitation Order of the President read with the Notification of the V.P. Government referred to above was the last word on this subject and that the subsequent amendments or additions contained in the V.P. *Government Gazette*, No. 18, dated the 30th December, 1951 at page 65 of Ex. PW2/3, were void and *ultra vires* in as much as these amendments or additions were not made or authorised by the President. Consequently, it is submitted that the polling in this constituency, so far as 13 villages of Garhwa Patwari Halka and other villages mentioned in this *Gazette*, dated the 30th December, 1951 are concerned was illegal and has materially affected the result of the election. This argument is plausible but is based on a large assumption concerning the President's Delimitation Order. Had this Delimitation Order specified the area and determined the extent of this constituency in precise terms, the matter would certainly have been plain and simple and this argument of the petitioner would have been unanswerable. To complicate matters, it appears in the evidence adduced by the parties that there were 3 Kanungo Circles in tehsil Deosar in the year 1951.

14. P.W. 3, *Shri Bhairon Presad Saxena, Tehsildar* has stated that there were 3 Kanungo Circles in tehsil Deosar, namely Gird. North and South. In his evidence he has referred to Halkabandi Register (Ex. PW/3) showing 3 Kanungo Circles. He was on duty as District Election Officer, Sidhi District. He has further stated that in Patwari Halka Garhwa 2 polling stations, namely Naudehia and Tamai were formed. This witness has further added that Deosar tehsil was divided into two Kanungo Circles under the President's Delimitation Order, dated 15th November, 1951 (Ex. PW3/3).

P.W. 1, *Shri Shankhe Lal, Registrar Kanungo* has stated that in 1949 there were two Kanungo Circles, namely North and South in Deosar Tehsil and there were 25 Patwari Halkas in the two circles. The witness further stated that some time in 1951 3 Kanungo Circles and 34 Patwari Halkas were formed, but for election purposes there were 2 Kanungo Circles on the basis of the previous Halkabandi Register (Ex. RW1/1). He added that there was no Patwari Halka, named Garhwa in this Halkabandi Register (Ex. RW1/1).

R.W. 5, *Shri M. N. Zutshi, Deputy Commissioner, Satna* who was Returning Officer of Deosar Constituency has stated that there were 3 Kanungo Circles in Deosar Tehsil when he was Deputy Commissioner of Sidhi District. He took charge of this office on the 15th of June, 1950.

R.W. 7, *Shri Toshan Singh, Registrar Kanungo*, who was working in the office of the Chief Electoral Officer, Vindhya Pradesh, at Rewa as an upper division clerk has stated that proposals for Delimitation were sent up on the basis of 2 Kanungo Circles in Deosar Tehsil. He has added that the list of "corrigendum" contained in the V.P. *Government Gazette*, dated the 30th December, 1951, already referred to, was published on receipt of order from Central Government. The latter statement of this witness is obviously incorrect.

C.W. 1, *Shri Rajkumar Shukla*, Office Superintendent of the Office of the Chief Electoral Officer, V.P. produced a voters list of 13 Patwari Halkas which according to him, comprise Deosar Constituency. These are marked Exs. CW1/1 to CW1/30. He, however, added that 3 villages, namely Rambni of Patwari Halka Khadaura, Bhagrohahi of Patwari Halka Geer and Chaulai of Patwari Halka Barkal were not mentioned in the alleged "corrigendum". He further stated that no proposal for this "corrigendum" was sent to the President, nor was his consent obtained for its issue. This witness also affirmed that there was nothing in the record of his office to show what villages constituted Deosar Kanungo Circle at the time when the proposals for the formation of this constituency were sent up to the President. According to him the number of villages and the names

of Patwari Halkas were not specified in the proposals. But only the number of voters for general as well as for reserved seat was stated. He could not find records in his office showing the extent of Deosar Kanungo Circle in terms of villages and boundaries. It transpires from the evidence of this witness that on the report of the Returning Officers to this effect that the names of certain villages or Halkas were not mentioned in the Notification No. 11, a corrigendum had to be issued.

15. The evidence reviewed above does not carry us far enough. But the following facts clearly emerge from it:—

- (a) In 1951 when the Delimitation Order was passed there were 3 Kanungo Circles in Deosar Tehsil;
- (b) Previously there were 2 Kanungo Circles;
- (c) The President's Delimitation Order could not have been based on the existing 3 Kanungo Circles because the southern portion of tehsil Singrauli and one double member constituency mentioned in col. No. 1 of the table appended to the said Order was constituted as Singrauli-Niwās (page 1329 of Government of India Gazette (Extraordinary), Ex. PW3/3;
- (d) That being so, the extent of Deosar Constituency was determined by the area described as Deosar Kanungo Circle; and
- (e) The word 'North' has not been used in col. No. 2 of the Delimitation Table and the Kanungo Circle has been described as Deosar Kanungo Circle of Deosar Tehsil.

16. The crux of the question is what villages or Patwari Halkas constituted Deosar Kanungo Circle. If a ready-made extent of this Kanungo Circle was available from public records, our task would have been much lighter. As it is, the extent of this constituency has to be determined from the terms of the Notification and Halkabandi Register. A reshuffle in the extent of Patwari Halkas and changes in the description of these Halkas by name according to the headquarters of Patwaris make the task of interpretation of the Delimitation Order rather difficult. This difficulty has been immeasurably enhanced by the terms of Notification No. 11 of V.P. Government and its subsequent corrigendum. Even this corrigendum does not specifically mention what it was intended to do. The caption at page 65 of PW2/8 is "Tehsil Deosar". It is not even described as a corrigendum or in any other way, though at page 64 it is described as 'Sudhi Patra' of tehsil Gopadbanas and purports to be signed there by the Chief Electoral Officer. So also it purports to be a corrigendum regarding the villages of District Chhatarpur at the same page 65. But oddly enough it is completely silent regarding what was contemplated to be done about tehsil Deosar or Kanungo Circle Deosar. We have therefore to assume that it was a corrigendum about Kanungo Circle Deosar, though such assumption seems to be negated by the mention of 17 Patwari Halkas under the heading 'Tehsil Deosar' and above the heading 'Kanungo Circle Deosar'. We have, however, to make use of this extremely vague and ambiguous document as best as we can.

17. Compactness of constituencies in terms of Kanungo Circles may not be possible. This is clear from the entries under Constituencies in col. No. 1 of the Table of Delimitation Order at page 1330 in respect of Sidhi-Marwas, Churhat and Kanpura Constituencies wherein several Patwari Halkas have been excluded from Kanungo Circles forming a constituency or included in a constituency though they are not included in the relevant Kanungo Circles. Herein comes the importance of the Notification No. 11 of V.P. Gazette, dated the 15th November, 1951. In view of the terms of this Notification Garhwa Halka consisting of 13 villages was entirely excluded from Deosar Constituency. It is not expected that candidates or political parties should examine the reasons for this exclusion. They would naturally presume that for some reasons it was found to be feasible. This aspect of the question would be considered at length when the effect of this notification is examined hereafter.

18. The village Phulkesh is in Badkur Patwari Halka of Deosar North Kanungo circle according to the old Halkabandi register R.W. 1/1. This village is in the same Kanungo circle according to the current Halkabandi register P.W. 1/1. In the former the number has been shown as 419 and is one of the villages of a group of 23 villages constituting one Patwari Halka named as Badkud and numbered as 21. So also in the current Halkabandi Register Ex. P.W. 1/3. Village Phulkesh has been shown as one of the 19 villages constituting Badkud Patwari Halka. If the President's Delimitation Order refers to North Kanungo circle of Deosar Tahsil as Deosar Kanungo circle, as it does, the village Phulkesh should be deemed to be included in the Delimitation Order determining this constituency. We have already held that Deosar Kanungo Circle means North

Kanoongo circle of Deosar Tahsil. Consequently we hold that Phulkesh should be deemed to be included in Deosar constituency. This village is not, however, included in the list of villages constituting Deosar North Kanoongo circle in the notification No. 11 of V. P. Government already referred to.

19. The following 13 Patwari Halkas formed the North Kanoongo Circle according to the old Halkabandi Register (R.W. 1/1):—

S. No.	No. of Halkas	Name of Halkas.
1.	13	Khandaura.
2.	14.	Pura Dhand.
3.	15.	Ramgarh.
4.	16.	Karela.
5.	17.	Ajgurh.
6.	18.	Sooda.
7.	19.	Dobai.
8.	20.	Kekrai.
9.	21.	Barkur.
10.	22.	Bardi.
11.	23.	Dhooma Dand.
12.	24.	Gopla and
13.	25.	Tamai.

20. According to the current Halka Bandi Register (P.W. 1/3), North Deosar Kanungo Circle consists of the following 11 Patwari Halkas:—

1. Karaundia.
2. Keotali.
3. Khaira.
4. Lamsaray.
5. Deora.
6. Sooda.
7. Khatai.
8. Dharauli Kslan.
9. Pandri.
10. Parai, and
11. Geer.

21. It would appear from these lists of Patwari Halkas that there is no such Patwari Halka as Garhwa in North Deosar Kanoongo Circle according to the old or new Kanungo circles evidenced by the old and new Halka bandi Registers. It should, however, be remembered that the names of Halkas are liable to change and therefore we should try to find out whether the 13 villages which are said to form Garhwa Halka are included in any of the Patwari Halkas forming North Deosar under any other name. We had to look through the list of the villages of this Kanungo Circle and have found that these 13 villages were included in the old North Deosar Kanungo Circle as well as in the new North Deosar Kanungo Circle. These villages are included in the bunch of villages forming the halka described as Tamai in both the Halkabandi Registers Exs. P.W. 1/1 and R.W. 1/3. We have marked this Halka Tamai in red pencil in these registers.

22. Our finding on Issue No. 11 is that there is no such Patwari Halka as Garhwa, but the 13 villages in question should be deemed to be included in North Kanungo Circle of tehsil Deosar and, therefore, in the constituency described as Deosar (Deosar Kanungo Circle) in the President's Delimitation Order.

23. Issue No. IV.—In view of our finding on Issues No. II and III recorded above to the effect that these places should be deemed to be included in the President's Delimitation Order, it is not necessary to record any finding on this issue.

24. Issue No. V(a).—We have already dealt with the contents of Notification No. 11, dated 13th November 1951 published in the V. P. Government Gazette, dated 15th November 1951, (P.W. 2/1-A). At pages 71 to 73 of the Gram Suchi

of this Notification we have found the list of 12 patwari Halkas and villages comprised in North Deosar Kanungo Circle. The following Patwari Halkas have been shown as constituting this Kanungo Circle:—

1. Bichhi,
2. Naugai,
3. Keotali,
4. Barkur,
5. Deora,
6. Sooda,
7. Katarihar,
8. Karela,
9. Khandaura,
10. Ramgarh,
11. Geer, and
12. Bardi.

The patwari halkas 1 Bichhi 2 Naugai and 7 Katarihar in this list are not to be found either in the old or in the new Halkabandi Registers. Numbers of halkas are not given in this list.

25. The village 'Phulkesh' is missing from the list of villages contained in this Notification and so also Patwari Halka Garhwa is not to be found in this list. Nor are the 13 villages which are said to have formed this Patwari Halka to be found in this list. Our finding, therefore, is that this Notification did not include the village Phulkesh, Patwari Halka Garhwa, and other villages referred to in this issue.

26. *Issue No. V(b).*—What is the effect of the non-inclusion of these places in the said Notification? In dealing with this issue we must examine the object, significance and importance of the Notification No. 11 of V. P. Government specifying the Patwari Halkas and the villages comprising Deosar (North) Kanungo Circle according to the President's Delimitation Order. Delimitation means the determination of the extent of a constituency, i.e., the territorial division which will form the constituency. This is done by defining a constituency in terms of some administrative units. Generally such units are units for the purposes of Revenue administration. The President's Delimitation Order defined this constituency as Deosar Constituency and further described it in col. No. 2 of the Table appended to the order as Deosar Kanungo Circle. This was done after due compliance with all formalities prescribed by law on the recommendation of Election Commission and with due regard to the population of this territorial division. Naturally the President's Delimitation Order ended there. In the circumstances it was absolutely necessary to present a complete picture of this constituency by supplying necessary details in terms of administrative units and a list of villages constituting this constituency for the purposes of election. The Notification No. 11 purports to give flesh, body and colour to the constituency envisaged in the President's Delimitation Order by specifying units and villages for the information and guidance of all concerned. This Notification cannot, therefore, be brushed aside as an act of supererogation. Its terms are clear and unequivocal. While referring to the administrative units given in the attached list, this Notification adds as follows:—

"These are and shall continue to be the units for election purposes, notwithstanding any other arrangements for other purposes".

27. The formation of a constituency and determination of its extent are very vital and important preliminary steps for purposes of elections. The electorate and candidates concerned are entitled to know what exactly is the extent of the constituency. In this case this information was supplied to the electorate and candidates by virtue of the Notification No. 11 of V. P. Government and Chief Electoral Officer published on 15th November 1951 in V. P. Government Gazette. It cannot be expected that the voters and the candidates concerned should scan and examine the accuracy of this authoritative description of Deosar constituency mentioned in this Notification. In fact it would be extremely difficult to do so, because the current Kanungo Circles were 3 in number, and there were only two Kanungo Circles in the old Halkabandi Register on which the President's Delimitation Order was based. The lists of halkas given in paras. 19, 20 and 24 indicate that there is considerable difference between the halkas mentioned in this Notification No. 11 and the halkas of the old Halkabandi Register which was the basis of the President's Delimitation Order.

28. With relevant materials consisting of public records we had to wade through a long list of villages and halkas for the purpose of interpreting the Delimitation Order. The candidates and voters would naturally assume the correctness of the description of this constituency given in this Notification.

In fact the petitioner has done so and has contended that the list given in this Notification cannot be added to or subtracted from. At any rate this contention considered in the light of the evidence adduced by the petitioner proves that he actually acted upon the presumptive accuracy of this Notification. He has urged that the Notification No. 11 notified in emphatic terms "for general information that the Administrative Units on which the orders of the President regarding delimitation of constituencies" were given in the attached list. Was this Notification to be disregarded altogether and should the candidates and the electorates have set about the task of forming Deosar Kanungo Circle for themselves? There is considerable force in the petitioner's argument that he believed in good faith that the patwari halkas and villages mentioned in this Notification constituted this Deosar constituency delimited by the President. The petitioner as P.W. 5 has sworn to this fact as follows:—

"* * * * The clarification of the Delimitation Order regarding the extent of this constituency was made in the V. P. Gazette, dated 15th November 1951 (Ex. P.W. 2/-1A). Last date for filing nomination papers was 5th December 1951 and date of scrutiny 8th December 1951 and date of withdrawal 11th December 1951."

"On the 10th of January 1952 I was informed that final list of polling stations has been prepared. In that list two polling stations had been prepared. In that list two polling stations namely, Nandiva P. S. No. 4 and P.S. No. 5 were included contrary to the Notification P.W. 2/1-A. I had done my canvassing in accordance with this Notification. After coming to know about these two polling stations I sent my agents to the first of them namely, Nandiva. They were able to reach there on 11th January 1952, after midday. Nandiva polling stations is about 65 or 70 miles from the main road. There are no regular communications to that place. My agents had to go on foot. There is also Son river on the way. It cannot be crossed unless a boat is available....."

Further this witness states as follows:—

"At the time of delimitation order and since before that there were 3 Kanungo Circle in Deosar Tehsil namely, Supervisor Kanungo Circle North, Sup. Kanungo Circle South, and Sup. Kanungo Circle Gird. There was no Kanungo Circle named Deosar Kanungo Circle. It was brought into existence by President's Delimitation Order, dated 15th November 1951 (Ex. P.W. 3/3) defined by V. P. Gazette, dated 15th November, 1951 (Ex. P.W. 2/1-A)".

29. There is a ring of truth in the statement of P.W. 5 (Petitioner) so far as his belief in the extent of the constituency according to the Notification No. 11 and his conduct in canvassing dictated by this belief are concerned. He is corroborated by R.W. 4. Dadai Prasad resident of Naurhiya who has stated as follows:— "I was polling agent of the petitioner at the last election on the polling stations Nudahiwa and Tamai. Some 3 or 4 days before the election I was informed that I had to go to Naudehiwa and Tamai polling stations. Naudehiwa is 60 miles from Naurhiya and one has to go there on foot. The petitioner asked me to go there, canvass there and act as his polling agent. I could reach there only at about 12 mid-day 4 hours after the polling had started. I worked there after that for 4 hours. The same day after 4 or 5 p.m. I went to Tamai and worked there from start to finish". In cross examination this witness admitted that one Brahmin of Churhat had worked as petitioner's polling agent at Nandiva—and that at Tamai also this Brahmin had worked. It appears that at the eleventh hour the petitioner thought it safer to make a double arrangement for these newly added places owing to long distances. The respondent No. 1 did not cross examine the petitioner who was examined as P.W. 5 regarding the necessity or advisability of this double arrangement.

30. The respondent No. 1 is the only witness who made a feeble attempt to rebut the petitioner's evidence by stating that in Mauza Phulkesh a meeting was held by the petitioner 3 or 4 days after the scrutiny and that at Gadwa he had seen a Gadarla and a Brahmin of Rao Saheb canvassing for the petitioner 7 or 8 days after the scrutiny. This evidence is interested and unconvincing and does not rebut the petitioner's evidence.

31. We have no hesitation in holding that the non-inclusion of 13 villages which formed one patwari halka and other villages including Phulkesh in the Notification No. 11 gave a substantially incorrect idea of this constituency to all concerned including the petitioner and that the latter acted upon this Notification by confining his canvassing activities to the places mentioned in this Notification. The inevitable result was that this part of the constituency remained uninformed and un-nursed so far as the petitioner was concerned and also so far as the policy and programme of the political party to which he belonged was concerned up to the time when the contents of the so called corrigendum published in the V. P. Gazette, dated 30th December 1951 were made known to and understood by the petitioner and others. This was the effect of Notification No. 11 published in the V. P. Gazette, dated 15th November 1951 and we record our finding on this issue accordingly.

32. *Issue No. VI(a).*—This issue refers to the second Notification which has been described by the respondent No. 1 as corrigendum published in the V. P. Gazette, dated 30th of December, 1951 (Ex. P.W. 2/8). The relevant portion of this publication is to be found at page 65. We have already referred to the vague, sketchy and inconclusive nature of this corrigendum in para. 16 above. First of all, it has not been described as corrigendum (Shudhi Patra) at all, though such description has been given about Gopadbanas tehsil and other places of district Chhatarpur. We are, however, prepared to treat it as a corrigendum from the context of this part of the V. P. Gazette. Even so, the only reference to Kanungo Circle Deosar is in connection with Garhwa patwari halka consisting of 13 villages and not in connection with other villages including Phulkesh. In spite of the defective nature of this corrigendum and in view of our findings on the Issues No. II and III in favour of respondent No. 1, we hold that this corrigendum purported to add to Deosar constituency the villages mentioned in this issue.

33. *Issue No. VI(b).*—This issue is about the effect of this corrigendum. The effect of this corrigendum was a very belated compliance with the President's Delimitation Order, that is, about 45 days after the Delimitation Order, about 25 days after the filing of nomination papers for this constituency and only 11 days before the commencement of polling. During the intervening period the electorate in this added area had to remain in suspense and the candidate concerned was prejudiced by lack of canvassing in this indeterminate area. This is our finding on this issue.

34. *Issue No. VII.*—The vital question is whether the omission of this area from the Notification No. 11 and the belated compliance with the Delimitation Order and the polling in this additional area have materially affected the result of the election. We have already dealt with the object and importance of this Notification. Also we have already held that the petitioner was adversely affected in his election campaign on account of this defective Notification. The following questions of fact are very germane to the decision of this issue:—

- (a) What was the number of voters in this formerly excluded area, that is, in 13 villages of Tamai patwari halka mis-called Garhwa halka and the 9 villages including Phulkesh mentioned in para. 4(e) of the petition?
- (b) The respondent No. 1 having scored success over the petitioner by a majority of 39 votes only (Respondent 2,543 and petitioner 2,504), was it likely or probable that this result would have been otherwise, if there was due compliance with the Delimitation Order in the shape of correct and specific description of the constituency in good time?

35. The electoral rolls which are on the record of this case disclose the number of voters in these villages as follows:—

1. Rampurwa Kothar	..	50
2. Koldihwa	..	11
3. Gurgawan	..	170
4. Barram	..	239
5. Tamai	..	249
6. Naudihawa	..	268
7. Khaidar	..	207
8. Barwadih	..	111
9. Pandri Kalan	..	111
10. Jharkata	..	124
11. Pondi	..	145
12. Pandri Khurd	..	141
13. Garhwa	..	22
		<hr/>
Phulkesh	..	1,848
		<hr/>
		63
		<hr/>
		1,911

36. We have refrained from collecting the number of voters in the other 9 villages mentioned in para. 4(e) of the petition, because the figures relating to the 13 villages of the excluded patwari halka Tamai misdescribed as Garhwa are more than sufficient for the purposes of this issue. We are also inclined to think that the non-inclusion of the said 9 villages in the relevant halkas was more in the nature of an accidental error which should not be deemed to prejudice anybody. The case of exclusion of an entire halka stands on a different footing. Its exclusion can easily be presumed to be in pursuance of definite plan, because such halkas have been excluded in several constituencies delimited by the President's Order. The total number of voters in Deosar constituency is 26,289.

37. It has been proved beyond reasonable doubt that the petitioner was cut off from at least 1,848 voters for about 50 days from the Delimitation Order. The corrigendum published in the V. P. Gazette, dated 30th December 1951 could not have been made known to the petitioner and the electorate immediately. The petitioner has stated that he came to know about this corrigendum when he saw the finalised list of polling stations about a week before the commencement of the polling. We have given careful consideration to all the matters connected with this issue. In view of the figures given above and the difference of 39 votes between the total votes polled by the petitioner and respondent No. 1, we think that our conclusions would not be purely of a conjectural or problematical nature, though positive certainty in such matters is impossible. With more work in this area during the long period which elapsed between the Delimitation Order and the polling dates, it is probable that the petitioner might well have wiped out this difference of 39 votes and might well have secured a majority over the rival candidate. The Notification No. 11 placed the petitioner in a queer and unenviable position of being compelled to neglect this fair-sized area in his election campaign. At the eleventh hour he could give scant attention to this part of the constituency. The right and privilege enjoyed by candidates of contacting their voters was virtually denied to him for the best part of the time which should normally have been at his disposal. Undoubtedly the result of the election was materially affected by the incorrect and incomplete lists of administrative units and villages constituting Deosar constituency according to the President's Delimitation Order. In fact there was substantial non-compliance with this momentous order which was to be a vital and necessary step for the formation of constituencies for an inordinately long time and previous compliance, as it was, was of a defective and misleading nature. This has materially affected the result of the election. We, therefore, hold accordingly.

38. We have based our conclusions on the relevant materials on the record of this case. We however wish to add that we have carefully examined the file of the delimitation proceedings ending in the President's final order of delimitation under section 4 of the Government of Part 'C' States Act, 1951. These proceedings coupled with the final order further confirm our view already recorded that the necessary information in terms of administrative units and villages was to be furnished by responsible authorities in this State for general information.

39. *Issue No. VIII.*—The petitioner has contended that the village Phulkesh not having been included in the Notification No. 11 in any of the constituencies of this State, the nomination paper of respondent No. 1 ought to have been rejected by the Returning Officer. The basis for this contention is that the description of the serial number of the candidate as a voter in the relevant electoral roll is a *sine qua non* of a valid nomination paper. The respondent No. 1's name as a voter finds place in the list of voters of village Phulkesh. But this village itself having been excluded, the voters list relating to this village should have been excluded from consideration. At first sight this argument seems to be plausible. But on further examination of the matter its weakness is exposed. If it is pushed to its logical conclusion it means that the voters residing in village Phulkesh stood disenfranchised for the purpose of election of the State Assembly. This would be an absurd conclusion in view of the President's Delimitation Order already interpreted by us, in connection with Issue Nos. III and IV. It is to be noted that no separate electoral rolls were to be prepared for Assembly Constituencies, but so much of the roll or rolls for any parliamentary constituency or constituencies for the time being in force under Part III of the R. P. Act, 1950, as related to the areas comprised within an assembly constituency were to be deemed to be the electoral roll for that assembly constituency under section 6(2) of the Government of Part 'C' States Act, 1951. That being so, the village Phulkesh should be deemed to fall within some constituency of this State. In fact the President's Delimitation Order purported to include the village Phulkesh in Deosar constituency, though it happened to be excluded in the Notification No. 11 of the V. P. Government. We are not, therefore, prepared to uphold this rigid and technical contention of the petitioner. Our finding is that the nomination papers of respondent No. 1 was not improperly accepted.

In view of this finding Part (b) of this issue needs no decision.

40. *Issue No. IX.*—In view of the findings already recorded, no finding is called for on Issue No. IX.

41. The respondent No. 1 contended that this Tribunal had no jurisdiction to question the Delimitation of this constituency. This contention is queer and unnecessary simply because nobody has asked this Tribunal to question the Delimitation Order. All that the petitioner has asked for in this case is the interpretation of the Delimitation Order and its finality in terms of the Notification No. 11 of the V. P. Government. We have already interpreted this Delimitation Order and our findings on Issue Nos. II and III happen to be in favour of the respondent. We need hardly add that it is no part of our business in this case to question the validity of the President's Delimitation Order. No finding is, therefore, necessary on this issue which does not really arise in this case.

42. *Issue No. VI(a).*—There is no evidence on the record to support the petitioner's contention contained in para. 4(k) of the petition. This issue is, therefore, found in the negative.

43. *Issue No. XI(b).*—It has been proved that forms No. 10 for the 5 polling stations referred to in the petition were not properly filled in. We, therefore, hold accordingly.

44. *Issue No. XI(c).*—We hold that the irregularity referred to above has not materially affected the result of the election.

45. *Issue No. XII(a).*—We hold that the petitioner filed an objection before the Returning Officer for counting and scrutiny before the declaration of the result of this election. This objection finds place in the record of this case.

46. *Issue No. XII(b).*—It is further proved that the Returning Officer accepted this contention of the petitioner and commenced the recounting of a few packets, and before the completion of the counting, rejected the petitioner's objection.

47. *Issue No. XII(c).*—The petitioner has not asked us to recount the remaining packets in these proceedings. We have been ready to do so. Presumably the petitioner has thought that the previous counting of the Returning Officer was correct. Our finding, therefore, is that the irregularities in connection with the counting of votes as well as the proper maintenance of form No. 10 have not materially affected the result of the election.

48. *Issue No. XIII.*—We have already held that the inclusion of the villages mentioned in para. 4(e) of the petition was not illegal, though we have held that their previous exclusion was illegal and has materially affected the result of the election. Our finding on this issue, therefore, is that there was no improper reception of votes of the voters of these villages.

49. *Issue No. XIV.*—In view of our finding on Issue No. VII, the election of the returned candidate must be declared void. We, therefore, hereby declare the election of respondent No. 1 to be void.

50. The petitioner has further claimed that after recounting and scrutiny of the votes polled, he be declared elected. At the stage of argument this claim for recounting and scrutiny in these proceedings was not pressed. There are no materials for holding that the petitioner received the majority of valid votes in this election. The petitioner is, therefore, not entitled to this relief.

51. The result is that the petition succeeds regarding the first relief claimed, namely, the declaration of the election of respondent No. 1 to be void. We order that the respondent No. 1 shall pay Rs. 200 (Two hundred) as costs of these proceedings to the petitioner.

In this case Shri Gurprasanna Singh and Shri Harish Kumar Srivastava pleader appeared for petitioner and Shri V. K. S. Chowdhari Advocate assisted by Shri Ramayan Prasad Pande and Shri Raj Kishore Shukla Pleader for Respondent No. 1.

E. A. N. MUKARJI, *Chairman.*

G. L. SHRIVASTAVA, *Member.*

U. S. PRASAD, *Member.*

[No. 19/175/52-Elec.III/1934.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*